IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14065 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KOLI SHAMJI NAGJI

Versus

DY COLLECTOR AMRELI

Appearance:

1. Special Civil Application No. 14065 of 1993

MR SURESH M SHAH for Petitioner No. 1

Mr. LR Poojari, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioners, in the present Special Civil Application under Article 226 of the Constitution of India, have challenged the order passed by all the authorities below in not regularising the entire encroached land which in total admeasures 5 acres and 13 gunthas of land.

2. That the petitioners had encroached upon some portion of land of Survey No. 326 Paiki situate at Village Sanali, Taluka Vadia, District Amreli and it seems that he had submitted an application before the Deputy Collector, Amreli for regularising the encroachment admeasuring 1 acre and 39 gunthas of land which was on Survey No. 326 Paiki and the Deputy Collector, Amreli by his order dated 8.1.1986 had regularized the encroachment to the extent of 1 Acre and 39 Gunthas of land which was made by the petitioner on land bearing Survey No. 326 Paiki on certain conditions which are mentioned in the said order.

3. It seems that subsequently the petitioner had approached the Dy. Collector for regularising the encroachment of more land i.e., 3 acres and 14 gunthas of land contending inter alia that in fact the petitioner had encroached upon 5 acres and 13 gunthas of land of Survey No. 326 Paiki but at the relevant time when the application was made by the petitioner for regularising the encroachment actual measurement was not done and which is subsequently done and instead of 1 acre and 39 gunthas of land the encroachment of the petitioner is on 5 acres and 13 gunthas of land and therefore he has requested for regularising the rest of the land,i.e. 3 acres and 13 gunthas of land, which came to be rejected and thereafter he preferred appeal before the Collector, Amreli which was numbered as Land Revenue Case No. 13/1991. That Collector, Amreli, by his judgment and order dated 25th January 1992 dismissed the said application confirming the order passed by the Dy. Collector, Amreli dated 19th March 1991 in not regularising the encroachment of the petitioner with regard to the additional land admeasuring 3 acres and 14 gunthas of land by holding that the petitioner had subsequently made encroachment upon the land admeasuring 3 acres and 14 gunthas of land subsequently after the regularisation of the encroachment of 1 acre and 39 gunthas of land and application for regularisation of the land admeasuring 3 acres and 14 gunthas of land is malafide and made with a view to get more land.

4. That being aggrieved and dissatisfied with the said judgment and order passed by the Collector, Amreli, dated 25th January 1992 in dismissing the said appeal/application and confirming the order passed by the Dy. Collector, Amreli dated 19th March 1991 in not regularising the encroachment of additional land, i.e. 3 acres and 14 gunthas of land. The petitioner had preferred revision application before the learned Special

Secretary (Appeals), Revenue Department, State of Gujarat which was numbered as SRD 1/1992 and the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad by judgment and order dated 3.11.1993 had also dismissed the said revision application confirming the order passed by both the authorities below in not regularising the encroachment of additional land, i.e. 3 acres and 14 gunthas of land bearing Survey No. 326 Paiki. By rejecting the revision application the revisional authority, learned Special Secretary (Appeals) has held that the petitioner is holding the land admeasuring 5 acres and 25 gunthas of land and if 3 acres and 14 gunthas of more land is regularised, then the holding of the petitioner would be 8 acres and 39 gunthas of land and as per the Government Resolution dated 8.1.1980 the encroachment can be regularised if in the holding of that encroacher the area of land was not more than 8 acres of land. In the present case, it will be more than 8 acres in the holding of encroacher, i.e., the petitioner and therefore the same was rejected. He has also held that the petitioner has deliberately encroached upon the land and it is not the policy of the State Government to regularise the encroachment which is done deliberately. He has also held that if there was some mistake either in calculation and/or measurement then at that very point the petitioner should have preferred appeal against the original order by which the encroachment with regard to 1 acre and 29 gunthas of land was regularised in the year 1986.

5. That being aggrieved and dissatisfied with the orders passed by all the authorities below in rejecting the application of the petitioner for regularisation of encroachment of 3 acres and 14 gunthas of land, the petitioner had preferred the present Special Civil Application under Article 226 of the Constitution of India. Though in the cause title of this petitioner the petitioner has mentioned about filing of the petition in the matter of Article 226 of the Constitution of India, but from the orders passed by all the 3 authorities below the present Special Civil Application is required to be considered under Article 227 of the Constitution of India.

6. Shri MS Shah, learned advocate appearing for Shri SM Shah appearing on behalf of the petitioner had submitted that the learned Special Secretary has materially erred in considering the holding of the petitioner at 5 acres and 25 gunthas of land and has wrongly rejected the application of the petitioner for regularisation on the ground that if the encroachment of

3 acres and 14 gunthas of land would be regularised, then the holding of he petitioner would be more than 8 acres and therefore he has submitted that there is an arithmetical error committed by the learned Special Secretary and therefore requested to allow the present Special Civil Application. He has also submitted that in fact the petitioner had encroached upon the land admeasuring 5 acres and 25 gunthas of land, but at the relevant time when the petitioner made an application for regularisation of encroachment proper measurement was not done and therefore he made an application for regularisation of the encroachment to the extent of holding of 1 acre and 29 gunthas of land. However, on measurement being done subsequently it was found that the encroachment by the petitioner was not on 1 acre and 29 gunthas of land but on 5 acres and 25 gunthas of land and therefore he had approached the authorities for correction of the mistake and for regularisation with regard to rest of the land. He has also relied upon certain orders passed by the respondents by which the very respondents ordered to regularise the encroachment which is made on the basis of subsequent measurement and corrected the mistake.

7. On the other hand, Shri L.R. Poojari, learned AGP has submitted that in fact all the authorities below have found that the petitioner has encroached upon 3 acres and 14 gunthas of land subsequently and when the original application was made by the petitioner in the year 1986 it was only for regularisation of encroachment with regard to 1 acre and 29 gunthas of land and therefore no application was made by the petitioner for regularisation of the encroachment of more land. He has also submitted that all the authorities have held that the petitioner with a malafide intention had come out with the case with regard to mistake in calculation and/or contending inter alia that there was no measurement and on measurement it was found that the land which was in fact encroached upon was more land. He has also submitted that regularisation of encroachment is not a matter of right and the petitioner cannot claim the regularisation as a matter of right. Under the circumstances, he has requested to dismiss the present Special Civil Application.

8. I have considered the arguments canvassed on behalf of the parties. I have also considered the orders which are on record. All the three authorities below have concurrently found that the application of the petitioner for regularisation of land admeasuring 3 acres and 14 gunthas which was subsequently made is malafide

and with a view to get more land. When all the 3 authorities have concurrently found that the petitioner had encroached upon 3 acres and 14 gunthas of land subsequently, i.e., after getting the land admeasuring 1 acre and 29 gunthas of land being regularised and the same is finding of fact given by all the authorities below, this Court will not be justified in interfering with the said findings of fact in exercise of powers under Article 227 of the Constitution of India.

9. Though the Special Secretary (Appeals) has wrongly calculated the holding of the petitioner, but merely on the basis of the same the petitioner is not entitled to any relief. Even if the same is not there, then also it is found by all the authorities below that the petitioner had encroached upon the land admeasuring 3 acres and 14 gunthas of land subsequently after getting the land admeasuring 1 acre and 29 gunthas of land being regularised in the year 1986 and only with a view to get more land has come out with a case with regard to wrong measurement which cannot be believed. Under the circumstances, even otherwise the petitioner is not entitled to have the encroachment on land admeasuring 3 acres and 14 gunthas regularised. There is no fundamental right of the petitioner to encroach upon the land. Also, as a matter of right, the petitioner cannot claim to get the encroachment regularised. When encroachment on the land admeasuring 1 acre and 29 gunthas of land was regularised, the petitioner should have been satisfied with that but with a view to get more land the petitioner has encroached upon more land and has come out with a case with regard to wrong measurement with regard to other land which itself disentitles the petitioner for any relief.

10. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is hereby dismissed. Rule is discharged accordingly. Ad-interim relief stands vacated forthwith. The respondents are directed to initiate proceedings with regard to getting possession of the land admeasuring 3 acres and 14 gunthas of land back from the petitioner.

rmr. [M.R. Shah, J.]